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June 17, 1968

DEPARTMENT OF LAW OPINION NO. 68-6 (R-61)

REQUESTED BY: WILBUR R. JOHNSON, Executive Director
Arizona Civil Rights Commission

QUESTION: The Civil Rights Commission has entered a one-year contract with the federal government under which the Commission has hired persons, and there will be a thirty-day time lapse between the time the final monies arrive, and the time the salaries are due. We are requesting an opinion as to the legality of borrowing the money from the State for the final payroll.

ANSWER: There is no provision of law which would authorize such a transaction.

Arizona Constitution, Art. 9, § 5:

"The state may contract debts to supply the casual deficits or failures in revenues, or to meet expenses not otherwise provided for, but the aggregate amount of such debts . . . shall never exceed the sum of \$350,000. . . ."

In addition:

"No money shall be paid out of the State treasury, except in the manner provided by law."

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The provision in this section declaring that no money shall be paid out of the state treasury except in the manner provided by law means that no money can be paid out of the state treasury unless the Legislature has made a valid appropriation for such purpose and funds are available for payment of the specific purpose. Cockrill v. Jordan, 72 Ariz. 318, 235 P.2d 1009 (1951); Crane v. Frohmler, 45 Ariz. 490, 45 P. 2d 955 (1935).

We are aware of no legislative appropriation for the purpose of making state funds available on loan to the Civil Rights Commission for the cost of salaries incurred by virtue of the agreement with Equal Employment Opportunity Commission.

The power of the executive branch of the state government to incur an indebtedness under this section is confined to cases authorized by statute. LeFebvre v. Callaghan, 33 Ariz. 197, 263 P. 589 (1928). The Legislature has granted the Governor certain emergency powers in A.R.S. § 35-192. Payment of salaries under the circumstances you describe does not fall within any of the contingencies and emergencies specified in A.R.S. § 35-192.

The State Treasurer is prohibited from lending any money in the state treasury by virtue of A.R.S. § 35-301 (2):

"A public officer or other person charged with the receipt, safekeeping, transfer or disbursement of public money is guilty of a felony who:
... (2) Loans it, or any portion thereof."

A.R.S. § 35-303 further provides:

"A person who violates any provision of this

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article shall be punished by imprisonment in the state prison for not less than one nor more than ten years, and is disqualified from holding any public office in this state."

A.R.S. §35-196 also provides:

"Any state officer or employee who illegally withholds, expends or otherwise converts any state money to an unauthorized purpose shall be liable, either individually or on his bond, for the amount of such money, plus a penal sum of twenty per cent thereof, and an action may be instituted by the state auditor or the attorney general immediately upon the discovery thereof."

There is nothing in the statutes relating to the State Treasurer authorizing him to lend or advance money to state agencies under any circumstances (See A.R.S. § 41-172).

The procedure established by law for the payment of claims against the state includes the provision for filing of encumbrance documents by each budget unit covering all obligations, actual or anticipated (A.R.S. § 35-151). The State Auditor examines each encumbrance document to determine if there are unencumbered funds available to pay the proposed claim (A.R.S. § 35-152). A.R.S. § 35-153 provides:

"In no event shall any budget unit approve any encumbrance document which will involve an expenditure of any amount in excess of the unencumbered balance of the allotment to which the resulting expenditure will be chargeable."

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A.R.S. § 35-154 provides:

"A. No person shall incur, order or vote for the incurrence of any obligation against the state or for any expenditure not authorized by an appropriation and an allotment. Any obligation incurred in contravention of this chapter shall not be binding upon the state and shall be null and void and incapable of ratification by any executive authority to give effect thereto against the state.

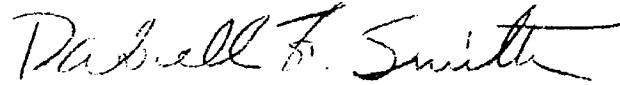
"B. Every person incurring, or ordering or voting for the incurrence of such obligations, and his bondsmen, shall be jointly and severally liable therefor. Every payment made in violation of the provisions of this chapter shall be deemed illegal, and every official authorizing or approving such payment, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received."

If the Arizona Civil Rights Commission has no funds available in its own current state appropriation for personal services to pay the claims in question, and if there is insufficient money available in the separate account established for the federal funds received by the Civil Rights Commission pursuant to the agreement with the Equal Employment Opportunity Commission, the salary claims incurred when funds were not available must be treated as unauthorized obligations.

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It should also be noted that under the terms of A.R.S. § 35-190, payment of all claims for services rendered during the current fiscal year must be paid within thirty days following the close of the fiscal year from funds available during the current fiscal year. This provision applies even though the funds to be used for payment are federal funds.

Respectfully submitted,


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The Attorney General

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